



BILLING CODE: 4510-27-P

DEPARTMENT OF LABOR

Wage and Hour Division

Agency Information Collection Activities; Comment Request; Information Collections: Paid

Leave under the Families First Coronavirus Response Act

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is soliciting comments concerning a proposed extension of the information collection request (ICR) titled, “Paid Leave under the Families First Coronavirus Response Act.” This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. A copy of the proposed information request can be obtained by contacting the office listed below in the FOR FURTHER INFORMATION CONTACT section of this Notice.

DATES: Written comments must be submitted to the office listed in the ADDRESSES section below on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by Control Number 1235-0031, by either one of the following methods: E-mail: WHDPRAComments@dol.gov; Mail, Hand Delivery,

Courier: Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S.

Department of Labor, Room S-3502, 200 Constitution Avenue, NW, Washington, DC 20210.

Instructions: Please submit one copy of your comments by only one method. All submissions received must include the agency name and Control Number identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via e-mail or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for Office of Management and Budget (OMB) approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Robert Waterman, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693-0406 (this is not a toll-free number). Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc), upon request, by calling (202) 693-0023 (not a toll-free number). TTY/TTD callers may dial toll-free (877) 889-5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. Background: On March 18, 2020, President Trump signed into law the Families First Coronavirus Response Act (FFCRA), which creates two new emergency paid leave requirements in response to the COVID-19 global pandemic. Division E of the FFCRA, “The Emergency Paid Sick Leave Act” (EPSLA), entitles certain employees to take up to two weeks of paid sick leave. Division C of the FFCRA, “The Emergency Family and Medical Leave Expansion Act”

(EFMLEA), which amends Title I of the Family and Medical Leave Act, 29 U.S.C. 2601 et seq. (FMLA), permits certain employees to take up to twelve weeks of expanded family and medical leave, ten of which are paid, for specified reasons related to COVID-19. On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act, Public Law 116-136 (CARES Act), which amends certain provisions of the EPSLA and the provisions of the FMLA added by the EFMLEA.

In general, the FFCRA requires covered employers to provide eligible employees up to two weeks of paid sick leave at full pay, up to a specified cap, when the employee is unable to work because the employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19, has been advised by a health care provider to self-quarantine due to concerns related to COVID-19, or is experiencing COVID-19 symptoms and seeking a medical diagnosis. The FFCRA also provides up to two weeks of paid sick leave at partial pay, up to a specified cap, when an employee is unable to work because of a need to care for an individual subject to a federal, state, or local quarantine or isolation order related to COVID-19 or who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; because of a need to care for the employee's son or daughter whose school or place of care is closed, or whose child care provider is unavailable, due to COVID-19 related reasons; or because the employee is experiencing a substantially similar condition, as specified by the Secretary of Health and Human Services. The FFCRA also requires covered employers to provide up to twelve weeks of expanded family and medical leave, up to ten weeks of which must be paid at partial pay, up to a specified cap, when an eligible employee is unable to work because of a need to care for the employee's son or daughter whose school or place of care is closed, or whose child care provider is unavailable, due to COVID-19 related reasons.

The FFCRA covers private employers with fewer than 500 employees and certain public employers. Small employers with fewer than 50 employees may qualify for an exemption from the requirement to provide paid leave due to school, place of care, or child care provider closings or unavailability, if the leave payments would jeopardize the viability of their business as a going concern.

Under the FFCRA, covered private employers qualify for reimbursement through refundable tax credits, as administered by the Department of the Treasury, for all qualifying paid sick leave wages and qualifying family and medical leave wages paid to an employee who takes leave under the FFCRA, up to per diem and aggregate caps, and for allocable costs related to the maintenance of health care coverage under any group health plan while the employee is on the leave provided under the FFCRA.

The CARES Act amended the FFCRA by providing certain technical corrections, as well as clarifying the caps for payment of leave; expanded family and medical leave to certain employees who were laid off or terminated after March 1, 2020, but are reemployed by the same employer prior to December 31, 2020; and provided authority to the Director of the Office of Management and Budget (OMB) to exclude certain federal employees from paid sick leave and expanded family and medical leave.

The FFCRA grants authority to the Secretary to issue regulations for certain purposes. In particular, sections 3102(b), as amended by section 3611(7) of the CARES Act, and 5111(3) of the FFCRA grant the Secretary authority to issue regulations “as necessary, to carry out the purposes of this Act, including to ensure consistency” between the EPSLA and the EFMLEA. The Department issued the temporary rule to carry out the purposes of the FFCRA. This rule published in the Federal Register on April 6, 2020 (85 FR 19326). The new paid sick leave and

expanded family and medical leave requirements became operational on April 1, 2020, and expire on December 31, 2020. As part of OMB's consideration of the temporary rule, the Department submitted an emergency processing request for the PRA package associated with the rule. Where OMB approves the collection of information on an emergency basis, the approval is time-limited and the agency must publish notice and comment on the collection to give the public opportunity to respond. Pursuant to 5 CFR 1320.13, OMB assigned control number 1235-0031 to this collection and approved the request on April 2, 2020 with an expiration of October, 2020.

II. Review Focus: The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Enhance the quality, utility, and clarity of the information to be collected;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions: The Department of Labor seeks an approval for the extension of this information collection in order to ensure effective administration of the Paid Leave provisions under the Families First Coronavirus Response Act (as amended by the CARES Act).

Type of Review: Extension.

Agency: Wage and Hour Division.

Title: Paid Leave under the Families First Coronavirus Response Act

OMB Control Number: 1235-0031

Affected Public: Business or other for-profit, Not-for-profit institutions, Farms, Federal, State, Local, or Tribal Government.

Total Respondents: 7,903,071

Total Annual Responses: 7,903,071

Estimated Total Burden Hours: 801,962

Estimated Time per Response: Varies with type of request (1.25-20 minutes):

Frequency: On occasion.

Total Burden Cost (capital/startup): \$0

Total Burden Cost (operation/maintenance): \$\$4,255,500

Dated: April 8, 2020.

Amy DeBisschop,

Director,

Division of Regulations, Legislation, and Interpretation.

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